

IV.B.1 Formal Document Requests

Introduction

Since many of today's abusive shelters involve foreign aspects, it is essential that you are familiar with foreign information gathering techniques. Foreign information gathering presents different challenges than domestic information gathering. The Service has tools, which if used properly, can assure full factual development of cases.

Seeking Foreign Documents

Ideally, when the Service seeks foreign documents, the taxpayer will cooperate by providing written authorization for foreign third parties (e.g., financial institutions) to disclose information.

If the taxpayer does not cooperate, consider issuing a "formal document request" (FDR). See IRM 4.61.2 (04/2002), discussing obtaining records from foreign persons and from locations outside the United States. IRC § 982 prohibits the introduction into civil proceedings by the taxpayer of any foreign-based documentation requested by the Service through an FDR. If the taxpayer fails to substantially comply with any FDR within 90 days, then the taxpayer shall be prohibited from introducing any foreign-based documentation covered by the FDR during a civil court proceeding. IRC § 982 is limited to documentation. The procedures under IRC § 982 may be an alternative to an IRC § 7602 summons where service of the summons cannot be made.

Continued on next page

IV.B.1 Formal Document Requests, Continued

Requirements for a Formal Document Request

An FDR can only request documents previously requested through an IDR. IRC § 982 defines a formal document request as "any request (made after the normal request procedures have failed to produce the request documentation) for the production of foreign-based documentation..."

An IDR Form 4564 is used for FDR's. The Form must:

- State "Formal Document Request" on the top
- Designate a reasonable time and place for the production of the documents (see IRC § 7605)
- Be mailed to the taxpayer's last known address by certified or registered mail
- Contain a description of the information being sought
- Inform the taxpayer of the consequences for failing to produce the documentation, i.e. the examiner intends to invoke IRC § 982
- Contain a statement explaining why the documentation previously submitted is not sufficient.

An FDR should not be used as a routine information-gathering tool. Therefore, advice from Counsel should be sought when considering the use on an FDR. Counsel can help determine the scope and wording of IDR's underlying the FDR. At a minimum, Counsel should be included in the review process.
